IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 365 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRASINH A CHUDASAMA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 365 of 1990

MRS KETTY A MEHTA for Petitioner

MR JM BAROT For HS MUNSHAW for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 12/10/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner was appointed as a Peon in Odhubha dispensary run by the Bhadiyad Gram Panchayat.

On 15th July, 1985, Bhadiyad Gram Panchayat passed a Resolution to hand over the said dispensary at Bhadiyad to the State Government. It was also resolved that Dr. Shukla appointed in the said dispensary and the petitioner, a Peon, be absorbed in Government service. Pursuant to the said proposal, the said dispensary was taken over by the State Government and was converted into a Primary Health Centre. The management of the said Primary Health Centre was handed over to the District Panchayat, Ahmedabad. It may, however, be noted that the date on which or the terms and conditions on which the State Government took over the management of the said dispensary has not been brought on the records of the matter. It appears that on transfer of the Primary Health Centre, Bhadiyad to District Panchayat, by order dated 15th December, 1988 made by the District Health Officer, the petitioner was continued in service as a part-time Peon on daily wages on consolidated pay till a regularly recruited candidate was appointed. On 22nd September, 1989, Taluka Panchayat, Dhanduka proposed that the petitioner be absorbed in Government service as Peon on permanent basis. On 6th January, 1990, the District Health Officer instructed the Medical Officer, Primary Health Centre, Bhadiyad to relieve the petitioner and to make appointment of part-time Peon afresh. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mrs. Mehta has appeared for the petitioner. She has submitted that the petitioner was appointed in the said dispensary at Bhadiyad as a Peon. He had rendered satisfactory service as Peon for more than seven years. Considering the said service, the Gram Panchayat as well as the Taluka Panchayat had, by their Resolutions dated 15th July, 1985 and 2nd September, 1989 respectively, recommended that the petitioner be absorbed in Government service as Peon on permanent basis. The petitioner's appointment as part-time Peon was subject to the appointment of a regularly recruited Peon. She has submitted that, therefore, the petitioner's service could not have been terminated as was suggested in the communication dated 6th January, 1990. Besides, the District Health Officer being the appointing authority, the Medical Officer would have no authority to terminate the service of the petitioner. She has submitted that the State Government had accepted the proposal of the Gram Panchayat and had taken over the management of the said dispensary alongwith its staff. Therefore also, the petitioner's service cannot be terminated that too without following the due procedure.

The petition is contested by the District Panchayat, Ahmedabad. Learned advocate Mr. Barot has submitted that the State Government took over the management of the said dispensary sans its staff. The State Government did not agree to absorb the doctor and the peon attached to the said dispensary in Government service. Accordingly, the doctor was not continued in service but the petitioner was appointed as part-time peon till the appointment of regularly recruited peon was made. He has submitted that the petitioner was appointed as part-time peon and was paid consolidated pay from contingency fund. The petitioner, therefore, cannot be said to be a civil servant. He has no right to continue in service.

The Government decision to take over the management of the aforesaid dispensary and the terms & conditions of such taking over is not produced before the Court; nor the State Government is party to this petition. As the petitioner was appointed as part-time Peon subject to appointment of regularly recruited peon, the petitioner cannot have a right to hold the post of part time peon. Considering the fact that the petitioner had been appointed as Peon in the aforesaid dispensary; he had served as Peon for more than seven years and has been rendering service as part-time Peon in the Primary Health Centre since the month of December, 1988 i.e. for nearly 16 years, the ends of justice shall be met if it is directed that the District Panchayat or the District Health Officer, whichever be the competent authority, shall fill in the post in Class-IV service in the Primary Health Centre, Bhadiyad by appointment of a candidate recruited after following the regular selection procedure in accordance with law. The petitioner's candidature for such regular appointment shall be considered subject to his eligibility, irrespective of the agebar, alongwith the other applicants. If found suitable, the petitioner be given regular appointment in Class-IV service. In the event, the petitioner is not found suitable, the petitioner's service may be terminated after following due procedure under the law. The petitioner's service shall not be discontinued until a person regularly selected is appointed in Class-IV service in the Primary Health Centre, Bhadiyad.

Subject to the above direction, the petition is disposed off. Rule is discharged. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

Prakash*